J. Division Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION NO. 4252 OF 2005
(PUBLIC INTEREST LITIGATION)

PETITIONERS

1. Balram Singh Thakur, aged 65 years, S/o Shri Chabbi Lal Thakur, R/o Tilaknagar Bilaspur, Tahsil & District Bilaspur (Chhattisgarh)

2. Shri Ravishankar Awasthi, aged about 50 years, S/o Shri Ganesh Prasad Awasthi, Agriculturist & Social Worker, R/o Masanganj, Bilaspur, Tahsil & Dist. Bilaspur (CG)

3. Abhay Kumar Kaushik, aged About 32 years, S/o Shri B.P. Kaushik, Agriculturist and Social Worker, R/o Village Amane, Post-Beeja, Tahsil & P.S. Takhatpur, District Bilaspur (Chhattisgarh)

P.B. No. 4537/05 Presented by Shri Shambhu Shukla dated 5/9/05

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VERSUS

RESPONDENTS

1. State of Chhattisgarh through the Secretary, Department of Energy, Mantralaya, Dau Kalyan Singh Bhawan, Raipur Dist. Raipur (Chhattisgarh)

2. Chhattisgarh State Electricity Board through the Secretary, Chhattisgarh State Electricity Board, Dangania,Raipur (CG)

3. Chairman Chhattisgarh State Electricity Board, Dangania, Raipur (Chhattisgarh)

4. Chief Engineer, Chhattisgarh State Electricity Board, Tifra, Bilaspur (Chhattisgarh)

5. Chhattisgarh State Electricity Regulatory Commission, Established u/s 82 of the Electricity Act, 2003, Raipur (Chhattisgarh)

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

[redacted] most respectfully submit as

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri D.R. Deshmukh, J.

WRIT PETITION NO.4252 OF 2005

Baltram Singh Thakur & others

Versus

State of Chhattisgarh and Others

Present: Mr. P. Diwaker, Sr. Advocate assisted by Mr. Sanjay K Agrawal and Mr. Rajeev Shrivastava, Advocates for the petitioners.

Mr. M.L. Jaiswal, Sr. Advocate assisted by Mr. A.S. Gaharwar, Advocate for respondents 2 to 4.

Mr. Kanak Tiwari, Sr. Advocate assisted by Mr. Prateek Sharma, Advocate for respondent No.5.

O R D E R

(Passed on 23rd of September, 2005)

The following oral Order of the Court was passed by **A.K. Patnaik, CJ: -**

The petitioner No.1 is a resident of Bilaspur and claims to be a public spirited person. He is also an elected Member of State Legislative Assembly from Takhatpur Constituency in district Bilaspur. The petitioners 2 and 3 are also residents of Bilaspur and also claim to be public spirited persons. They have stated in the writ petition that they are agriculturists but they are also associated in various social activities in the Bilaspur district and are concerned about the welfare of the society. The three petitioners have filed this PIL challenging the public notice in the news paper given by the Chhattisgarh State Electricity Board in Annexure-P/6 in

which the consumers of electricity have been asked to disclose voluntarily their connected load and to pay additional security, failing which action will be taken against them including lodging of F.I.R.

(2) Mr. P. Diwaker, learned Sr. Advocate assisted by Mr. Sanjay K. Agrawal and Mr. Rajeev Shrivastava, learned Advocates submitted that The Electricity Act, 2003 (hereinafter referred to as "the Act, 2003") enacted by the Parliament has now come into force and under Section 47 of the said Act a consumer can be asked to deposit only reasonable security as may be determined by regulations made under the said Act for payment to the licensee of all monies which may become due from the consumer in respect of the electricity supplied to the consumer. He submitted that the regulations regarding security amount to be deposited by a consumer are yet to be finalized under the Act, 2003 and in fact the Chhattisgarh State Electricity Regulatory Commission has framed Chhattisgarh State Electricity Regulatory Commission (Security Deposit) Regulations, 2005, but the said regulations are in the draft stage. He vehemently submitted that until the said regulations are finalized and published, no security deposit can be demanded from the consumers. He further submitted that under Section 47 of the Act, 2003, the security deposit that can be asked from the consumer has to be commensurate with the money that become due from the consumer to the licensee, but under the impugned notice it appears that the Chhattisgarh State Electricity Board intends to collect security deposit on the basis of the connected load of the consumers.

(3) Learned counsel for the petitioners further submitted that there is no provision under the law for lodging FIR against the consumers, if they do not voluntarily disclose their connected load and pay additional security

deposit as per the connected load and yet by the impugned notice, the Chhattisgarh State Electricity Board has threatened the consumers that FIR would be lodged against those consumers, who do not disclose voluntarily their connected load and pay additional security as per the connected load.

(4) Mr. M.L. Jaiswal, Sr. Advocate assisted by Mr. A.S. Gaharwar, Advocate for respondents 2 to 4 / Chhattisgarh State Electricity Board, on the other hand, submitted that notwithstanding the enactment of the Act, 2003 by the Parliament, the provisions with regard to the security deposit made by the Chhattisgarh State Electricity Board under the regulations made under the Electricity (Supply) Act, 1948 would govern till the regulations regarding security deposit are framed in accordance with Section 47 of the Act, 2003, by the Chhattisgarh State Electricity Regulatory Commission and this is because a vacuum with regard to the terms and conditions of supply of electricity including the security deposit was not intended by the Act, 2003, till the regulations are made in accordance with Section 47 of the Act, 2003. In this context, he referred to the provisions of Section 185 of the Act, 2003 to show that the said provisions while repealing the provisions inter alia the Electricity (Supply) Act, 1948 has provided in sub-Section (2) thereof that notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or any document or instrument executed or any direction given under the repealed laws shall be deemed to have been done or taken under the corresponding provisions of the Act, 2003. He referred to the provisions of Section 135 of the Act, 2003 to show that different acts amount to theft of electricity are offences punishable and submitted that

FIR can be lodged by the licensee complaining of commission of offences by the consumers as indicated in Section 135 of the Act, 2003.

(5) Mr. Kanak Tiwari, Sr. Advocate assisted by Mr. Prateek Sharma, Advocate for respondent No.5 / Chhattisgarh State Electricity Regulatory Commission submitted that there was no reason whatsoever for the petitioner to have rushed to this Court in a writ petition under Article 226/227 of Constitution of India. He submitted that Chhattisgarh State Electricity Regulatory Commission has framed different regulations under the Act, 2003 including a regulation regarding security deposit and the said regulation regarding security deposit will be finalized and published in no time. He submitted that in case the consumers have any grievance, they can always lodge a complaint before the forum established under the Chhattisgarh State Electricity Regulatory Commission (Redressal of grievance of consumers and establishment of forum and Electricity Ombudsman) Regulations, 2004. He referred to the definitions of "Complaint" and "consumer dispute" to show that disputes with regard to enhancement in load and security deposit amongst other disputes can be referred by the consumers to the forum for redressal of the grievance of the consumers.

(6) Sections 47(1), 185(1) and (2)(a) of the Act, 2003 on which reliance has been placed by learned counsel for the petitioners and the Chhattisgarh State Electricity Board are quoted herein below:

> "47. **Power to require security.** – (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him-

(a) in respect of the electricity supplied to such person; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,

any if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

185. **Repeal and saving.** – (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal,-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act."

A reading of the provisions of Section 47(1) of the Act, 2003 would show that a distribution licensee may require any person, who requires a supply of electricity in pursuance of Section 43 to give him reasonable security, as may be determined by the regulations, for the payment to him of all monies which may become due to him in respect of the electricity supplied to such persons. Admittedly, the regulations contemplated under Section 47(1) of the Act, 2003 have not been finalized as yet though the same

have been made by the Chhattisgarh State Electricity Regulatory Commission. Until the said regulations in terms of Section 47 of the Act, 2003, which are in draft stage, are finalized and published and made known to the consumers, the same cannot be enforced. Section 185(1) of the Act, 2003 repeals inter alia the Electricity (Supply) Act, 1948 save as otherwise in the Act, 2003, but sub-section 2(a) provides that notwithstanding such repeal, things done, action taken, rule, notification, inspection, order or notice made or issued, or any documents or instrument executed or any direction given under the repealed laws including the Electricity (Supply) Act, 1948 shall insofar as it is not inconsistent of the provisions of the Act, 2003 be deemed to have been done or taken under the corresponding provisions of the Act, 2003. The legal consequence of the said provision in sub-section (1) and sub-section (2) of Section 185 is that insofar as the provisions in terms and conditions of the supply made by the Chhattisgarh State Electricity Board under the Electricity (Supply) Act, 1948 are concerned the same will continue to be in force even after coming into force of the Act, 2003 to the extent they are consistent with the Act, 2003. Hence, if the present provisions made by the Chhattisgarh State Electricity Board under the Electricity (Supply) Act, 1948 regarding security deposit are consistent with the provisions of Section 47 of the Act, 2003, the same will continue to be in force till fresh regulations are made in terms of Section 47 of the Act, 2003 by the Chhattisgarh State Electricity Regulatory Commission.

(7) It has been brought to our notice by Mr. M.L. Jaiswal, Sr. Advocate assisted by Mr. A.S. Gaharwar, Advocate that under the general conditions for supply of the electrical energy made by the Madhya Pradesh Electricity Board adapted by the Chhattisgarh State Electricity

Board, as amended by the subsequent circulars dated 24.10.1991 and 06.12.1993 security deposit to be tendered by the LT consumers (in cash) shall be based on 1½ months' average consumption found during last six months instead of highest consumption. In our view, security deposit based on 1½ months' average consumption during the last six months is consistent with the provisions of Section 47 of the Act, 2003 which contemplates reasonable security for payment of money due from the consumer to the licensee. Therefore, till the regulations are finally made and published by the Chhattisgarh State Electricity Regulatory Commission regarding security deposit, the Chhattisgarh State Electricity Board would be entitled to demand security deposit from the LT consumers (in cash) based on 1½ months' average consumption found during the past six months and nothing more.

(8) Regarding threat to the consumers for lodging FIR, the same can be lodged only for the alleged offences. Hence, if any of the offences mentioned in part XIV of the Act, 2003 is committed or any offence committed under any other law, FIR can be lodged before the appropriate authority but, if no offence is committed either under the Act, 2003 or under any other law, the question of lodging any FIR against any consumer does not arise.

(9) Mr. Kanak Tiwari, Sr. Advocate is right that if a statutory forum has been constituted by the Chhattisgarh State Electricity Regulatory Commission under the Chhattisgarh State Electricity Regulatory Commission (Redressal of grievance of consumers and establishment of forum and Electricity Ombudsman) Regulations, 2004, the consumers must normally approach the said statutory forum constituted under the said regulations and it is only in extraordinary cases which have been

indicated by the Supreme Court in its various decisions that such consumers can approach this Court under Article 226 of Constitution of India notwithstanding the alternative statutory remedy available under the said regulations.

(10) With the aforesaid observations and directions, the writ petition stands disposed of. Liberty is given to the petitioners to move this Court by a separate petition for decision on any of the issues not decided by this judgment and order.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

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